COATES-LAHUSEN

IBLA 83-107 Decided December 9, 1982

Appeal from decisions of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 72575 through U MC 72603 and U MC 87436 through U MC 87468.

Affirmed.

1. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Relocation

   For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

2. Mining Claims: Generally -- Mining Claims: Location -- Mining Claims: Relocation

   An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter, a copy of the evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence

of assessment work is not filed, for whatever reason, the statutory consequence must be borne by the claimant as set forth in 43 U.S.C. § 1744(c) (1976).

4. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. As a matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Joseph Coleman, Esq., Grand Junction, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Coates-Lahusen appeal the October 13, 1982, decisions of the Utah State Office, Bureau of Land Management (BLM), which declared the unpatented Amended Nog No. 1, Pet Nos. 1 through 59, and B O Nos. 1 and 2 lode mining claims, U MC 72575 through U MC 72603 and U MC 87436 through U MC 87468, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), for mining claims located prior to October 21, 1976.

Appellant contends the decisions of BLM are erroneous because the filings of location notices appellant made in April and June 1979 were relocations, not amended locations, so that no proof of labor was required until 1980. It argues that the preexisting locations did not satisfy all the prerequisites for valid locations, so their 1979 locations could not relate back to the earlier locations, citing R. Gail Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982). Appellant alleges that no markings or monuments identified the preexisting claims on the ground so there can be no presumption that those claims had ever been properly marked or posted. In fact, the earlier claims were of "floating" variety, not tied to any specific surveyed point or corner. It further argues that their 1979 filings did not show a complete chain of title from the earlier locator to it so its locations must be considered by BLM to be "relocations," again citing Tibbetts. Appellant's 1979 locations should be recognized as subsisting locations because proper proofs of labor have been timely filed each year since 1979.

The original Pet Nos. 1 through 26 claims were located in December 1965 by one Clifford L. Carter. The amended location notices filed with BLM April 3, 1979, by appellant recites, following a metes and bounds description:

> This being the same as [Pet No. 1 lode claim] originally located on the first day of December 1965, and recorded on the ninth day of December 1965 in Book [376, page 621] in office of the Recorder of San Juan County, Utah. This further additional and amended certificate of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location or description of record.

Additional amended location notices for these claims filed with BLM May 11, 1982, recited the same language, with this additional clause: "[A]nd of taking taking in and acquiring all forfeited or abandoned overlapping ground and of taking in any part of any overlapping claim which has been abandoned."

The language recited in the "Amended Location Notice" distinctly indicates that the original locations were being more clearly identified and do not suggest or intimate a "relocation" of an abandoned claim.

[1, 2] A thorough discussion of "amended locations" and "relocations" appears in R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), which deserves repetition here:

> [1] While a number of departmental, federal, and state court decisions have attempted to draw a distinction between relocation of a former claim and an amended location of such a claim, it is clear that nothing approaching uniformity has resulted. This confusion is understandable since it finds its germination in the 1872 Mining Act, itself. Section 5 of the Mining Act, as amended, 30 U.S.C. § 28 (1976) contains the only reference to relocation:
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> > On each claim located after the 10th day of May 1872, and until a patent has issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year. * * * [A]nd upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. [Emphasis added.]
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> There was no reference in the original mining law of the United States to an "amended" location. The term "amended notice of location" was used in section 1 of the Act of August 12, 1953, 30 U.S.C. § 501(a) (1976) and in section 1 of the Act of August 13, 1954, 30 U.S.C. § 521(a) (1976) relating to mining claims originally located on lands which were embraced by either

a mineral lease or a mineral lease application. The term, however, was not defined. It is in no small part due to this omission that the subsequent history of mining law adjudication has been mired in a seemingly endless sea of contradictory statements.

The difficulty arose virtually immediately as a number of states passed laws which permitted amended and additional certificates of location. See Tonopah & Salt Lake Mining Co. v. Tonopah Mining Co., 125 F. 389 (C.C.D. Nev. 1903). This was necessitated by the fact that it was not unusual for the original notice of location to contain various minor defects, particularly as regards the actual physical location of the claim. Thus as early as 1885 the Federal courts recognized the right of the mineral locator to amend his location. See McEvoy v. Hyman, 25 F. 596 (C.C.D. Colo. 1885). It is interesting to note that at this early date, the court recognized, in interpreting the Colorado statute authorizing amended locations, that "[i]t is perhaps unfortunate that the question of amending a certificate and of changing the boundaries of claim, which amounts to a relocation, should be expressed in general terms relating to both subjects, and in one section of the law." Id. at 599-600. The court continued noting that the right of correction of the certificate of location had been recognized independently of statutes expressly authorizing amendments to certificates. See also Fred B. Ortman, 52 L.D. 467, 471 (1928). Moreover, the court opined that the proviso of the statute limiting its relation back to those situations in which no intervening rights had been initated [sic] referred to the situation where the boundaries of the claim were changed, i.e., a relocation, and not to the amendment of a certificate of location. Accord, Hagerman v. Thompson, 68 Wyo. 515, 235 P.2d 750, 756 (1951); Nichols v. Ora Tahoma Mining Co., 62 Nev. 343, 151 P.2d 615, 625 (1944). See also Brattain Contractors, Inc., 37 IBLA 233(1978).

Similarly, in a case styled John C. Teller, 26 L.D. 484 (1898), the Department held that an amended location, permitted by Colorado State law was "made in furtherance of the original location and for the purpose of giving additional strength or territorial effect thereto, while [a relocation] is a new and independent location which can only be made where the original location and all rights thereunder have been lost by failure to make the necessary annual expenditure." Id. at 486. [1/]

1/ It is worth noting that the amended certificates of location in the Teller case contained the following language: "This further amended certificate of location is made without waiver of any previously acquired rights but for the purpose of correcting any errors in the errors in the original location, description or record." The Department found that this language foreclosed any contention by Teller that he relocated the claim as a new adverse location under the relocation provision of the mining laws now codified at 30 U.S.C. § 28 (1976). John C. Teller, 26 I.D. at 486. This is virtually the same language which appears in appellant's amended certificates of location.

A relocation is, by the terms of the statute, adverse to the original location, being permissible only where there has been a failure by the original locator to perform assessment work. See Burke v. Southern Pacific R.R. Co., 234 U.S. 669, 693 (1914); Belk v. Meagher, 104 U.S. (14 Otto) 279, 284 (1881); State of South Dakota v. Madill, 53 I.D. 195, 200 (1930). Thus, unlike an amended location for which credit may be obtained for expenditures made on behalf of the original location (see Tam v. Story, 21 L.D. 440, 443-44 (1895)), moneys spent in the development of an original claim may not be applied to a relocated claim to fulfill the statutory requirement that $500 be expended on development prior to the issuance of patent. See Tough Nut No. 2 and Other Lode Mining Claims, 36 L.D. 9 (1907); Yankee Lode Claim, 30 L.D. 289 (1900). A critical question, and one crucial to this case, is whether and in what circumstances an amended location relates back to the date of the original location.

For the purposes of this decision, we will define an "amended" location as a location which is made in furtherance of an earlier valid location and which may or may not take in different or additional ground. The term "relocation" will be limited to those situations in which the subsequent location is adverse to the original location. 2/

[2] It will be seen that generally an amended location relates back, where no adverse rights have intervened, to the date of the original location. See Morrison, Mining Rights, 16th ed. (1936), at 159-163. Thus, in Bunker Hill & Sullivan Mining & Concentrating Co. v. Empire State-Idaho Mining & Development Co., 134 F.268 (1903), the Circuit Court for the District of Idaho noted: "It has long been held that a mining location may be amended without the forfeiture of any rights acquired by the original location, except such as are inconsistent with the amendment, but new rights cannot be added which are inconsistent with those acquired by other locations made between the dates of the original and the amended location." Id. at 270. Additionally, there are certain circumstances in which an amended location notice will relate back to the date of the original notice even in the face of intervening adverse claims. Thus, it has been held that if the amended notice is made to cure obvious defects in the original notice without including any new ground, it will relate back to the original notwithstanding intervening locations. McEvoy v. Hyman, supra; Gobert v. Butterfield, 23 Cal. App. 1, 136 P. 516 (1913); Bergquist v. West Virginia-Wyoming Copper Co., 18 Wyo. 270, 106 P. 673, 677-78 (1910).

2/ No attempt will be made to reconcile the terminology used herein with all prior Departmental decisions for the simple reason that they are virtually irreconcilable. See generally G. Reeves, Amendment v. Relocation, 14 Rocky Mt. Min. Law Inst. 207 (1968).

While the Bunker Hill case notes that the amended location relates back to the extent it is not inconsistent with the intervening rights of others, it must be remembered that if the original claim was valid and was maintained in conformance with the law, the land embraced by the claim would not be open to the initiation of adverse rights (Farrell v. Lockhart, 210 U.S. 142 (1908), and thus an amendment would of necessity relate back, provided no new land was included in the amendment. See generally Waskey v. Hammer, 223 U.S. 85 (1912); Atherley v. Bullion Monarch Uranium Co., 8 Utah 2d 362, 335 P.2d 71 (1959). No amended location is possible, however, if the original location was void. See Brown v. Gurney, 201 U.S. 184, 191 (1906). A void claim would be one in which a locator has failed to comply with a material statutory requirement. Flynn v. Vevelstad, 119 F. Supp. 193 (D. Alaska 1954), aff'd, 230 F.2d 695 (9th Cir. 1956).

There is no doubt that withdrawal of land from mineral entry constitutes such an appropriation of the land as to prevent the initiation of new rights. See Mark W. Boone, 33 IBLA 32 (1977); Lyman B. Crunk, 68 I.D. 190, 194 (1961); James M. Wells, A-28549 (February 10, 1961); United States Phosphate Co., 43 L.D. 232 (1914). But to the extent that the amended location merely furthers rights acquired by a valid subsisting location, withdrawal of land subject to existing rights will not prevent the amended location. It should be emphasized, however, that the original claim must have been valid, and not voidable, in this situation. While it is true that a legal presumption arises in favor of a mineral claimant in possession and working the claim against the attempts of another claimant to enter upon the land and make a discovery, such presumption does not arise against the United States. Brattain Contractor, Inc., supra at 238 and cases cited. See Houck v. Jose, 72 F. Supp. 6, 10 (S.D. Cal. 1947), aff'd, 171 F.2d 211 (9th Cir. 1948). By withdrawing the land, the United States has prohibited the initiation of new claims and also prevented the curing of substantive defects in other claims. 3/

Thus, we hold that to the extent that an amended location, i.e., one made in furtherance of an original location, merely changes a notice location without attempting to enlarge the rights appurtenant to the original location, such amended location relates back to the original. Examples of such amended locations would be a change in the name of the claim (Butte Consolidated Mining Co. v. Baker, 35 Mont. 327, 89 P. 302, aff'd

3/ We are aware that placer claimants have, in certain instances, been required both to obtain new land and relinquish land originally claimed in order to conform the claim to an official survey. Inasmuch as that fact situation is not presented herein, we need not determine whether, in these circumstances, the inclusion of new land operates as an exception to the general rule.

> on rehearing, 90 P. 177 (1907); Seymour v. Fisher, 16 Colo. 188, 27 P. 240 (1891)), the exclusion of excess acreage so long as the original discovery point is preserved (see Waskey v. Hammer, supra), and a change in the record owners of a claim where such change is reflective of an existing fact (United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 441 (9th Cir. 1971); Thompson v. Spray, 72 Cal. 528, 14 P. 182 (1887)). [Emphasis in original.]

43 IBLA at 213-20, 86 I.D. at 540-43.

It must be held, therefore, that the "amended location notices" were just that, and not "relocations" adverse to the original locations. It is not apparent that new ground is included in the "amended locations" additional to or different from that in the original locations. The "amended locations" thus relate back to the original locations. Therefore, for the recording requirements of FLPMA, these claims are subject to the requirements imposed by the Act upon unpatented claims located prior to October 21, 1976.

[3] Under section 314 of FLPMA, the owner of a mining claim located prior to October 21, 1976, must file on or before October 22, 1979, with the proper office of BLM, a copy of the notice of location as recorded in the local recording office, and a notice of intention to hold the claim or evidence of assessment work performed on the claim. Prior to December 31 of each year thereafter, the owner must file both in the local recording office and in the proper office of BLM evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intention to hold is not filed in both places, for whatever reasons, the statutory consequences of presumptive abandonment of the claim, as provided by 43 U.S.C. § 1744(c) (1976), must be borne by the claimant. Edna L. Patterson, 64 IBLA 316 (1982); Glenn D. Graham, 55 IBLA 39 (1981).

[4] This Board has no authority to excuse lack of compliance with the statute or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As the Board stated in Lynn Keith, supra:

> The conclusive presumption which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).
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> * * * Appellant also argues that the intention not to aban- don these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it

> was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

Appellant may wish to confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bernard V. Parrette
Administrative Judge
Alternate Member